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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,653	12/05/2003	Birgit Schleifenbaum	3968.099	8456

7590 11/28/2006

PENDORF & CUTLIFF  
5111 Memorial Highway  
Tampa, FL 33634-7356

EXAMINER
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KENNEDY, SHARON E

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/728,653

Applicant(s)

SCHLEIFENBAUM ET AL.

Examiner

Sharon E. Kennedy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14, 15 and 17-23 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____                                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                           |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Specification***

The disclosure is objected to because of the following informalities: In the published version, paragraph [0081] recites the incorrect US patent application number. The number should be US 2001/0024678. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

Claims 1-3, 7-11, 14, 15, 18-20, 22, 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Peterson et al., US 5,370,864. The spherical microcapsules disclosed by Peterson contain a liquid core surrounded by a seamless solid shell. Note the dimensions set forth in column 2. Note the additional materials which may be added in column 4, lines 4-13.

Claims 1, 4, 5, 6, 14, 17, 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Akamatsu et al., US 5,780,056. Note the various bloom values set forth in column 4, lines 11-19. The particle sizes are set forth in column 4, lines 45-60.

#### ***Allowable Subject Matter***

Claims 12 and 13 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of

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the base claim and any intervening claims. Claims 12 and 13 are directed to the gellan gum and content thereof contained in the shell. None of the prior art discloses or suggests the gellan gum, in combination with the other claimed embodiments.

Applicant has already discussed the closest prior art in the background of the application. JP 1037259 (San Ei) describes gelatin capsules having a gellan gum content in the shell from 0.08% -2.4% gellan gum. However, the solids content of the shell is at least 50%, while applicant claims a shell comprising 70-90% gelatin and 10-30% plasticizer. Regarding the patent application to Scott et al., US 2001/0024678, for two-part capsules, where gellan gum can be used as a constituent of a setting system. In addition to being two part, the capsules have a dissolving power which is unacceptable, non analogous to the present invention. Accordingly, claim 13 is allowable.

### ***Contact Information***

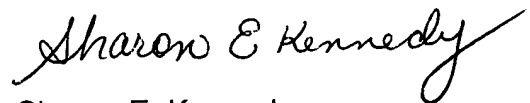
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on 571/272-8373.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Sharon E. Kennedy". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Sharon E. Kennedy  
Primary Examiner  
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